

(5)

# LUNACY AND LAW.

AN ADDRESS

ON

## THE PREVENTION OF INSANITY

DELIVERED BEFORE THE

MEDICO-PSYCHOLOGICAL ASSOCIATION OF GREAT  
BRITAIN AND IRELAND

BY

SIR WILLIAM R. GOWERS, M.D., F.R.S.

WITH AN APPENDED NOTE.



LONDON

J. & A. CHURCHILL,  
7, GREAT MARLBOROUGH STREET

1903.

PRICE ONE SHILLING.



# LUNACY AND LAW.

---

AN ADDRESS

ON

## THE PREVENTION OF INSANITY

DELIVERED BEFORE THE

MEDICO-PSYCHOLOGICAL ASSOCIATION OF GREAT  
BRITAIN AND IRELAND

BY

SIR WILLIAM R. GOWERS, M.D., F.R.S.

*WITH AN APPENDED NOTE.*

LONDON

J. & A. CHURCHILL,  
7, GREAT MARLBOROUGH STREET

1903.



Digitized by the Internet Archive  
in 2015

<https://archive.org/details/b22385848>

## LUNACY AND THE LAW.

*An Address given to the Medico-Psychological Association, on  
November 20th, 1902,*

By SIR WILLIAM R. GOWERS, M.D., F.R.C.P., F.R.S.

MR. PRESIDENT AND GENTLEMEN,—When I was honoured last summer with a request from your Secretary to deliver this address, I felt that the difficulties were to me insuperable. But it is said that one of the virtues of the British soldier is that he never knows when he is beaten, and I soon found that your Secretary possesses the same characteristic,—he does not know when he is refused. It came to pass, therefore, that one day, while travelling by the Great Western Railway, I was considering the terms in which, with courtesy and firmness, I might finally decline the task, when I chanced to see, out of the carriage window, that which symbolised the precise cause of my inability and gave me the help I needed. But it was so suggestive that it overdid my needs. It furnished me with an explanation of my inability which seemed to me worth stating, even at some length, and I thought that the statement might interest you. Its symbolism went further, and as I pondered, it suggested considerations which have developed my apology into the semblance of an address,—a semblance which I cannot quite distinguish from the reality. And so it has come to pass that I am here to-day.

Can you guess the nature of that which met my eyes and seemed so full of meaning? It was a simple wall—the wall around the grounds in which stands that unstateley edifice you know so well, the asylum at Hanwell. A wall may divide and separate, it may include and exclude. That Hanwell wall

does all this, and in doing so it seemed to me an emblem full of meaning. Along the road outside, wayfarers walked, the carter drove his team, with no thought of those who slowly paced the sward within, unseeing and unseen. Both sides of the wall were visible, and the contrast impressed the absolute separation it effects.

My first concern with it is as a symbol of the circumstance from which proceeded my sense of inability. No one can gain a knowledge of any class of diseases, sufficient to justify him in an attempt to instruct others who are habitually occupied with these maladies, unless he is or has been actually in charge of sufferers from them. In other ways he may acquire the knowledge that suffices for his own needs, the ability to discern clearly and to advise wisely, but he cannot otherwise obtain the fulness of knowledge which justifies an effort to instruct. That familiarity with mental disease is denied to those who live their lives and work their work outside asylum walls. I know that you, indeed, desire that these November addresses should come from outsiders, and that you have received, from such, addresses that leave nothing to be desired. But you know how individuals differ ; that which one can do another cannot. The cause of my difficulty is worth a few moments' thought.

Some years ago a good deal was heard in depreciation of specialism in medicine. The care of the insane is more than a specialism, in the literal sense of the word. It is an exclusivism, and is ordained to be such by the powers that be. It is not difficult to perceive how this has come to pass. The taunt is sometimes thrown at asylum doctors that they regard the care and cure of the insane as synonymous terms. Whether the missile hits the mark or not, it certainly rebounds. The real significance of our present arrangements is that those who designed the system regarded the care and cure of the insane as identical, if, indeed, there was any place in their conception for the *cure* of the insane. They must have held that disease of the mind was always independent of disease of the body or any part of the body, that care of the insane was alone needful, and that their cure was entirely negligible. We have grown up with the arrangements thus ordained, and are accustomed to them. My own opinion is that the present absolute divorce between the treatment of insanity and general medicine is not wise and is not necessary. But I do not propose to speak of

this. It has no connection with the subject I desire to bring before you.

For this, I venture to perceive another symbol in the Hanwell wall. Not only does the wall exclude, it also includes. One reason for its existence is detention. It is the agent of that detention which is the object of the certificate under which it receives its inmates, which asserts that its subject is "unsound in mind, and a proper person to be detained." It is said that "stone walls do not a prison make," and we know that even brick walls are not essential for the effective detention which the certificate warrants and necessitates. It is of this detention and certification that I desire to speak, though not with reference to those within asylums or licensed houses. It is the regulations controlling the reception of private patients that I ask you to consider, and not only the law, but its effects, which, were it strictly carried out, would, I believe, be disastrous.

The chief object of the latest form of the Lunacy Law is to prevent those who are not insane being treated as if they were, to prevent those of sound mind being deprived of personal liberty in an asylum or elsewhere, and to ensure proper treatment for those who are detained. To secure these objects it is decreed that all persons of unsound mind shall be deprived of liberty, shall be stigmatised as insane, and placed under the complete control of the Commissioners in Lunacy. No distinction is made, no discrimination is permitted; all forms and degrees of mental unsoundness must so far be treated alike. Thereby I am convinced injustice and positive injury are done which exceed in total amount that which the law can prevent. A few cases of wrongful confinement of the sane, and a few cases of ill-treatment of imbeciles by relations, attracted keen attention and aroused an amount of indignation altogether disproportionate to its cause—indignation that warped the public judgment. It was apparently thought that preventive regulations could not be too sweeping or too strong. No distinction was made between different forms of mental derangement; no distinction was permitted between its different degrees. One criterion, and only one, was accepted—the formal technical evidence of mental unsoundness. One principle, and only one, determined the incidence of the law—whether the care of the patient was paid for. That is the present condition. If any money is received by those who have charge of the patient,

there must, by compulsion, be the same certification, the same branding as insane, the same visiting, the same control, the same restriction of movement, as if the patient were in an asylum. The conditions are identical for the most quiet and harmless patient as for the most troublesome lunatic. Yet any insane person may continue uncertified in his own house ; those on whom a patient is dependent may keep him uncertificated. A relative, perhaps any person, may take him uncertificated without payment ; but any payment, even to a relative, compels the same course, the same stigma, the same distressing processes. This is compulsory, under heavy penalties, irrespective of the character of the malady from which the patient is suffering, and without the least regard for any necessity for it ; without the least regard for the harm to the sufferer which may ensue, and which does and must result in a large number of cases.

Further, besides the cases of definite mental unsoundness, for which this measure is wholly needless, and to many of which it is gravely injurious, there is a large class of border-line cases. Of many of these two Commissioners may take opposite views ; by one a patient may be pronounced mentally sound, by another unsound. No one can receive even a doubtful case for payment except at risk of prosecution.

I wonder how many of those whom I am addressing know how frequent are the cases to which I refer,—the cases of mental unsoundness which need not, and ought not to be certified, to many of which all that certification involves is purely harmful and quite unnecessary. I wonder if you know how numerous are the border-line cases, many of whom quickly recover, but of whom some pass into a graver state. Let me mention one or two examples of the case I have in mind. I will not occupy your time with many, but will mention three I have quite lately seen. Case after case comes into my mind, some of them even more forcible, but these, which are unselected, may suffice.

A man came to me who had the common delusion that all people whom he passed or met, friends or strangers, were talking about him and his private affairs. He came from one of the colonies, where grave symptoms with much mental excitement had existed, but had passed away. Indeed, some months before I saw him he was certainly in a condition that would have justified detention, for he got out of a moving train

and wandered about all night. But when he was brought to me the disturbance had subsided to the quite harmless delusion I have mentioned. It distressed the patient, but caused no annoyance or irritation ; and in general he was sensible, and always tranquil. It naturally still caused anxiety to his friends. It was a definite delusion, and he was therefore certainly of unsound mind. I thought, however, that his recent voyage on a steamer full of passengers had probably helped to maintain the delusion, for those who have been on a liner know how often the vessel seems like a large whispering gallery. There are cases of this character in which such a delusion involves danger, but I satisfied myself it was not the case here. I thought it likely that the delusion might pass away if he were placed in good and quiet surroundings, under due care. But this could only be secured by payment, and either he must be certified or the law must be broken. I considered (and I believe every one of you would have thought the same) that it would have been absolutely wrong to have placed the patient under certificates. I arranged a course which was clearly contrary to the law. I sent the patient with his wife to a doctor, who received them into his house for payment. What was the result of thus breaking the law? In a fortnight he was well, the delusion was gone. I saw him some months later, still quite free, in spite of travel and meeting many strangers ; he has now returned to his colonial post and is maintaining perfect health. In this case had the patient been certified, this, with all that it involves, would not only have been perfectly unjustified, but it would have been purely harmful ; it might have destroyed the prospect of recovery, and certainly would have delayed improvement. Yet the process in such a case, with all its pain and possible destruction of the chance of recovery, is compelled by the law as it now stands. His reception uncertified was illegal ; it involved a liability to prosecution with all its incidental distress and its expense, and it is certain that the doctor could not have escaped conviction, although he might have escaped a heavy penalty. But the actual penalty is the smallest part of the infliction.

Again, a married woman had suffered, and still suffered when I saw her, from a moderate degree of depression, but no suicidal tendency could be or had been discerned. The depression was accompanied by one frequent delusion, always the same but

not constant, that when she heard birds singing the birds spoke to her. I could not satisfy myself that their notes seemed words to her ; she could not or would not state that she ever understood what they said. But it was a distinct delusion, conclusive proof of mental unsoundness. It was desirable that she should have a change of immediate surroundings. She had an aunt, who had been a trained nurse, who desired to take the patient into her own house, but could not afford to do so unless expenses were paid. Although she was a relation, such is the law that she could not receive the patient uncertified if money were paid. She would break the law and render herself liable to prosecution unless the patient were certified. But it was a case in which certification would have been absurd and most harmful to the patient. The aunt knew the law, and did not take her ; the patient had to go without the needed change. Strange it is, but a fact, that the infraction of the law is the same if the payment is less than the cost of the patient, and however much less it is. The receiving payment, not making profit, is that which constitutes the crime, for crime it is regarded. The fact of relationship might have been regarded as a palliation, but the law makes no distinction. It is equally criminal for a fond relation as for a stranger to take such a case for payment uncertified. Both these cases illustrate my contention that it is unjust to deal with cases by general technical rules ; each needs consideration on its own merits, now legally impossible.

Let me mention another instance, a border-land case, one on which two Commissioners might differ. A few weeks ago a single woman of 45 was brought to me on account of depression. Her life had for many years been one of extreme strain, first with a most erratic father, and, when he committed suicide, with a mother subject to alcoholic outbreaks. She had become depressed, and gave as the chief cause of her distress an inability to concentrate her thoughts on her prayers. Her brother, moreover, said that she had fancied persons whom she passed were talking of her, and had become suspicious, fancying plans were being concocted about her, and had spoken of getting out of life. This evidence seemed conclusive of mental unsoundness ; but she was a quiet, sensible woman, though too emotional, and it turned out that her fancies had been transient and not fixed, and the

hints she had given were such as to indicate only a slight evanescent tendency to suicide. The need for change and freedom for a time from the domestic strain was absolute, but when this was proposed, her distress was most painful to witness. I am certain that any medical Commissioner would have said, "It would be absurd and cruel to place that patient under certificates." But if his legal colleague had said, "Can you say she is of sound mind?" he would have been compelled to say "No." And he would have had to give the same answer if the legal half of his own mind had put the question—for I suppose in every Commissioner one cerebral hemisphere becomes legal and only one can remain medical. It is an instance of the many cases in which the indications of mental unsoundness are definite, and yet are such as to be of little immediate importance. Mental unsoundness is no absolute thing. The hard and fast lines we draw do not correspond with nature. That which is fixed and grave in one patient may be transient and unimportant in another. Yet we crush disease into our formal compartments, and produce an artificial correspondence—we attempt to adapt disease to our rigid law instead of framing laws to conform to disease; but in doing so we sometimes destroy the chance of recovery.

You are all familiar with the process of certification from the medical side. May I ask you to consider for a moment what it is to the patient, and the friends. The nearest relation, a husband or a wife for choice, must sign an order requesting that the patient may be taken charge of and detained as a "lunatic," an "idiot," or a "person of unsound mind." The last expression is chosen for euphemistic reasons, but it is well known to be synonymous with the first; those to whom it is the keenest grief are compelled to make the assertion. Then the patient has to be subjected to examination by two doctors, separately, commonly strangers, who have, with such tact as they happen to possess, to worm out the inmost thoughts, and discover what fancies have possession of the mind, or discern the nature and degree of the depression, that each may make a similar declaration. The process is often lengthy, and not rarely occasions intense distress to the patient. Next, as you know, the proceedings have to be brought for confirmation before a justice of the peace, who is empowered, if he thinks it necessary, also to have an interview with the sufferer, a power

happily not often exercised. Then follows removal to private care or to an asylum, and enduring detention, with all that it involves ; a moral imprisonment under the Commissioners, until they release. Of course all this is simple, necessary, and comparatively harmless to a large number of cases, but I am pleading for the many for whom it is not necessary, and to whom it is harmful, more or less,—and to many not only “more,” but most harmful. No effort at concealment can hide from many patients the nature of the process, and it is clearest to those to whom it is most injurious. They know all that it means. Many who are on the brink of insanity are distressed intensely by the haunting question, and its constant pressure on the quivering mind—“Shall I go mad?” To them the process gives the answer, and sounds the knell of hope. It gives the answer, in tones that wake a never-dying echo in the soul,—“ You *are* mad.”

So it would have been, I am certain, in the last case I have mentioned. Under the gentle and tactful care of a lady to whom she went, she steadily improved, and regained stability, but so great was the distress which even this step caused, that certification would assuredly have overturned the mental balance, and made her definitely, perhaps enduringly, insane. Her reason has been saved by breaking the law, or, at least, by going perilously near it. In the first case, with a definite delusion, which was lost in a fortnight, apart from the effect of certification on the patient, who was otherwise equally sensible and sensitive, the only person who could have signed the requisition was his wife, and I doubt whether any effort would have made her face the pain.

I could have adduced a large number of similar examples, but these cases, seen during the last few months, are sufficient, and if they fail to illustrate my point effectively, I do not think that others would succeed.

I am certain that if the present law were strictly carried out everywhere by everyone the result would be to cause a considerable increase in insanity. I do not mean that it would increase merely the number of lunatics discerned to be such ; it would increase the number of the insane by preventing the recovery of many cases. This disaster is now only avoided by breaking the law by sending uncertified to the care of those who will take them and run the risk, border-line cases, many of

which may reasonably be regarded as of unsound mind, and who recover under such care.

Ladies can take such resident patients at far less risk than doctors ; patients, I mean, who might be certified because, according to strict technicality, they may be regarded as mentally unsound, or cases of doubtful nature ; the opinion of which may be determined by the bias of the observer. What we should do without the help of these law-breaking ladies in many cases of transient mental aberration in young women, I do not know. Of course that verbal salve, the word "hysteria," oils the wheels and perhaps makes to slip and slide the legal brake ; but the extent to which the strict letter of the law—and, indeed, the definite spirit of the law—must be broken in the interest of the sufferers is, I think, a discredit to British legislation to which it would be difficult to find a parallel. It is a monstrous thing that the interest of any given patient should be absolutely without influence in the decision of the question whether he should be certified. That it is needless matters not ; that it is harmful, however harmful, matters not. The question turns solely on a purely technical limit of mental soundness, practically on a legal point.

Such compulsory certification is absolutely beside the question of the danger, which aroused so much feeling, that the mentally sound may be certified and sent to an asylum. To compel every person of unsound mind to be certified cannot secure that no sound person shall be certified. It must have been due to a fear that patients received for payment and uncertified would be ill-treated. But the security that payment involves is, if not absolute, very great. The danger exists chiefly in the case of the weak-minded, and as regards them most of the few instances on which the fear is based have been cases of gratuitous care by those on whom the sufferers are dependent, a condition which legislation especially excepts. In one recent case of true mental unsoundness in which there was a prosecution for ill-treatment of a private patient the prosecution failed ; the accused was acquitted.

The old Common Law of England met the needs of the cases we have considered far more wisely than do our present enactments. It permitted any patient to be taken charge of for payment who was not dangerous to himself or others. These are the real grounds for compulsory detention, with, of course, the diffi-

culty of management which intractable and violent symptoms involve. But the Common Law has been altogether superseded by the Lunacy Acts. With their provisions for the close security against wrong certification and for the proper supervision of the insane who must be certified, I have nothing to do. *That which constitutes the hardship is that the law compels the compulsory certification of every case, however needless or harmful, as a condition for the skilled care which can only be obtained by payment.*

I do not point out the evil without proposing a remedy. Every advantage the present law can give, every security from possible danger it can afford, would be obtained, and all the needless suffering and harmful influence I have deplored would be avoided, by a comparatively simple change. Let the law remain as it is regarding all cases in which certification is obviously necessary. Nothing that I have said applies to them. But for all cases of mental unsoundness in which certification and compulsory detention seem needless, and in border-line cases, regarding which doubt may reasonably be felt, substitute a system of Notification. Let the law direct everyone who receives such a case for payment to notify the fact, and the particulars of the case, and on whom the patient was dependent, to the Commissioners in Lunacy within a certain time. Let the Commissioners or some one deputed by them visit the patient if it is thought necessary; and it doubtless would generally be so regarded. If the visitor considered that certification was essential in the interests of the patient or for the safety of others, let the process be enjoined and follow at once under heavy penalties. But let the well-being of the patient and the safety of others determine the question. For justice sake, for right's sake, abolish once for all the artificial standard of technical mental unsoundness as determining the proceeding. If the arrangements for the patients were unsuitable, the friends should be informed. The visit of the Commissioners should be repeated, or a further report sent, when it was thought desirable. When the patient left the receiver's care it should be his duty to inform the Commissioners, and state why and where the patient had gone. If it was to his friends, the duty of the Commissioners would be at an end. If to the care of another

paid receiver, a similar report should be sent from him. There should be no compulsory detention in the case of such notified patients, nothing having any analogy to certification, and the notification should be necessary only in the case of those who are obviously or possibly unsound in mind. Notification should be carried out with consideration for the interest of the patient, in a way to encourage and not deter it.

As the law stands at present, by definite enactment and by the precedent of judicial decision, such a system is impossible. How easy its arrangement would be, the certificate itself reveals. It would become the notification I suggest by the insertion of the word "not." It would only be necessary to say that Mr. J— "is a person of unsound mind and is not a proper person to be detained." At present the second clause is regarded as essentially connected with the first; the insertion of the negative would apparently be useless as the present law is interpreted.

Doubtless such a change would increase very much the work of the Commissioners, and would entail an increase in their number or the establishment of a class of medical sub-commissioners to do the work. But ought this to stand in the way of that which is urgently needed—needed not only in justice, but needed that the number of the insane may not be definitely increased, as it would be were the present law strictly carried out? Indeed, I am sure that this would increase the work of the Commissioners to an extent that would entail an increase in their number not less than would be needed by the arrangement I advocate. As it is, the work they get through fills a reader of their reports with astonished admiration. He is not surprised, therefore, to find that they are unable ever personally to investigate the cases of illegal reception for payment in which they institute prosecutions, but transfer the task to the superintendent of a neighbouring asylum, to whom they are authorised to transfer their powers.

This brings me to another subject. I have urged the need for a change in the law on the ground of the interests of the sufferers and their friends, and because it is such that every consideration of humanity, every consideration for their recovery, which is to our profession the paramount motive, compels the constant infraction of the law. But this infraction involves

perilous risk to those who take such cases, cases that are on or just over the border-line, which *must* be taken uncertified if they are to have a reasonable prospect of recovery. In this respect the present law is cruelly unjust alike to members of our profession and to those outside our profession, chiefly ladies, who devote themselves with no small skill and no small success to getting such patients well.

You may think that I exaggerate the danger. Let me give you some facts to show that I do not. The reports of the Lunacy Commissioners describe their prosecutions, and many of them are sufficiently instructive. They present its injustice so prominently that I cannot pass them unnoticed. The Commissioners have no option but to enforce the law, but, at least to the medical members, I am sure it must often be a painful task. Let me say, however, once for all, that I suggest no reflection upon them. They have to carry out the law, and apparently have no choice but to investigate, and to prosecute if the law has been broken. That the infraction of the law was for the welfare of the patient, and actually conduced to such welfare, is no excuse, and involves no exemption.

Let me first mention one of many illustrations of the needless effect of the law. In 1897 the Commissioners report that "our attention was directed to the fact" that a lady had two patients of unsound mind under her care. The superintendent of a neighbouring asylum was requested to visit and report. He stated that one of the two patients presented no definite evidence of mental unsoundness, but he thought that a practitioner with frequent opportunities of examining her would come to the conclusion that she was certifiably insane. The other patient he considered certifiable as a congenital imbecile, because "she rambled on irrelevant subjects, and continually laughed in a silly way." No objection was made against the treatment of the patients; apparently they were in excellent care, and there was no reason, in their own interest, for certification. But because one patient was technically certifiable the lady was prosecuted and subjected to the distress and the expense such a prosecution involves. It is creditable, I think, to the Justices of the Peace, that their common sense prevailed, and she was acquitted; but she had to pay the costs of her prosecution as well as of her defence.

I abstain from taking up your time with other examples of a similar character, in most of which the law prevailed, and conviction with a penalty followed. But one case is so striking that I cannot pass it. In 1900 the Commissioners state (note the words) that "Our attention was drawn" to the case of an elderly lady, partially paralysed in all four limbs, bedridden. Organic disease of the brain had evidently caused this extensive palsy, but it had also caused delusions. You know well how mental as well as physical symptoms are often due to organic disease. It is so in acute inflammations ; it is so, often, in tumour of the brain. She was under the care of a doctor in Mayfair. It seems incredible, but it is a fact, that because the patient was technically unsound in mind, the doctor, against whose care nothing could be urged, was prosecuted, convicted, and fined. "At our suggestion," the Commissioners add, this poor paralysed lady was taken away, certified as a lunatic, and placed under other care. This was the result of the present law. I cannot express the opinion regarding it which I doubt not you entertain, but had I the verbal capacity of a Swinburne, I would try.

In these, as in many other prosecutions, the Commissioners state that the facts "came to our knowledge," or that "we received information," and the like. The source of the information is never stated, but it is notorious that it usually comes from some discharged attendant or nurse acquainted with the law, or from some rival and jealous practitioner who strives to inflict a stab in the back, *and in the dark*. The law seems to compel the Commissioners to make themselves the agents of the private malice ; but is it well that they should keep the source of injury a secret ? I maintain that every secret informer should be told that when his information is acted on, its source will be made known. To keep it secret is contrary to all our conceptions of justice and right, and makes the Commissioners not only the agents of malice, but of lying malice, as the following case will show.

Some years ago I was consulted by an eccentric young clergyman who was fond of long solitary walks, and he was forgetful of little things, and had a strange habit of talking to himself or talking to his dogs. He never had any symptom suggestive of mental unsoundness. I thought he would be the better for a period of quiet rest in a fresh environment,

and I advised him to go and stay with a doctor whom I knew at a seaside town (whom I will call Dr. X), and I advised the doctor to take him. He went, and proved, except for his slight eccentricity, a pleasant companion. He was the first resident patient Dr. X had had. In the course of a month or so the Commissioners in Lunacy wrote to him to say that they had received information that he "had in his house a lunatic not under proper care and control." Then the Superintendent of Police for the district was sent to Dr. X with a paper to be filled up, requesting him to state what lunatics he had had in charge at any time, and what lunatic he had at that particular time; how long each one had been with him; how they had been disposed of, and what fees he had received on their account. Dr. X rightly refused to answer any of the questions, simply stating that he had not any uncertified lunatic in his charge. He then received a visit from some other official, demanding that certain papers should be signed; but Dr. X refused to sign them. He next received a peremptory letter from the Commissioners saying that they had certain information that he had an uncertified lunatic in his house, and threatened him with prosecution. On this he put the matter in the hands of his solicitors, and—heard no more of it! For the accuracy of the facts I can vouch. I pass by the proceedings themselves, and would merely mention that they are thrown into greater relief by the fact that, a year or two later, Dr. X was made a Justice of the Peace by the Lord Chancellor whose Commissioners treated his word as worthless. I mention the case as an illustration of the occasional character of the secret information on which the Commissioners act. Its source in this case is of course unknown, but whence it came is reasonably conjectured, and if the conjecture is correct, the truth would have surprised the Commissioners themselves. Possibly they thought it worth while to find out when the solicitor's letter reached them.

Other prosecutions have a different and important cause. They depend on the transfer of a patient from private care to an asylum because he becomes worse or was received under a mistake as to the character of his malady. It is a fact that such a mistake does not exonerate. The law is held to be broken, as if the patient were taken with full knowledge of his certifiable insanity. An old saying alleges that we suffer more

for our mistakes than for our sins. Many an instance of the fact saddens us as we pass through life; but is it not a new thing for English law to enact, and English jurisprudence to enforce, equality of suffering for an error and a fault? The Report for 1899 states that a patient was admitted to St. Luke's Hospital from the care of a lady in an East Coast town. This lady, a few days after she received the patient, wrote to the patient's friends, "presumably," the Commissioners say, "with a view to her removal." What more could this lady have done? But for some reason, which is not stated, four weeks elapsed before arrangements could be made and the patient transferred under certificates to St. Luke's. Therefore the lady was prosecuted by the Commissioners, and was convicted. Apparently the Justices had no choice by the letter of the law, but they expressed their opinion by merely binding over the lady to come up for judgment when called on. Of course she had to endure the distress and cost involved, which is always serious, and may be disastrous.

Early in 1900 the lady in charge of a Nursing Home at York was prosecuted because a patient was certified, and removed to an asylum, who had been in the Home for three months. Strange to say, the nurse who attended on her was prosecuted also, although there was no allegation of ill-treatment. Both were convicted and fined. In the latest report, for 1902, is an account of the prosecution and conviction of the proprietors of a Nursing Home for having in the Home two patients of technically unsound mind. They were apparently well cared for, but a fine of £40 was inflicted.

How severe is the indirect penalty is illustrated by the case of a Bournemouth doctor, whose prosecution and conviction the Commissioners record, although they are naturally silent as to its sequel. Dr. Broadhurst erred against knowledge, if he did err. Strong evidence for him was given, but he thought it would be the shortest way out of his trouble to plead guilty. So it proved to be. He was fined. The result was his bankruptcy, and on the way to town to meet his creditors he ended his life by his own hand.

Prosecutions consequent on the certification of a patient and his removal to an asylum, because he becomes worse, seem to me particularly unfair, since the knowledge is the result of compliance with the law. I have just seen a lady with moderate

lethargic depression, but, as far as can be ascertained, not the slightest suicidal tendency. Twice she had been unable to rise from her knees, or to speak for more than an hour. Two days before I saw her she had given evidence of a delusion, harmless, but grave in its significance—an idea regarding an elderly clergyman similar to that which some Russian peasants entertain for their "Father John." I have secured for her the best chance of recovery by sending her, uncertified, to the care of a lady; but if she becomes worse and has to be sent to an asylum, I do not see how that lady can escape prosecution. But I am sure that I ought to be prosecuted also.

If any consideration is shown, or any discrimination exercised by the Commissioners, other than that which depends on the prospect of obtaining a conviction, no indication of it is given in their Reports. It cannot be discerned; it cannot even be suspected. Over every one who takes a doubtful case the risk of prosecution hangs like a sword suspended by a seeming thread. If there is consideration on the part of the Commissioners, the law seems to afford no room for it. Humanity compels them to break the law not less than those whose actions they ignore. But, if so, what of the law? It will be said, I know, that the enforcement of the law is necessary for the safety of the public; that it is necessary that all cases taken for payment should be supervised lest they be ill-treated, and that for such supervision certification is essential. This I deny. The Notification I advocate would secure the safety of the public if properly carried out. Particulars should be given of the patient and those who are responsible. If the conditions are unsuitable, removal should be insisted on.

Much may be said also of the difficulty of dealing with patients who try to escape,—of the offence at common law created by a locked door. This difficulty may easily be made to loom large on paper, and be made much of from rare incidents, but it almost vanishes when fairly confronted in the light of experience. I am sure that this would be the testimony of those who have had much to do with the patients for whom I am pleading. Patients who need physical detention ought to be certified. Those members who have only asylum experience may think that it is so with most of these cases, but persons who have had the care of them, and those who have otherwise to deal with them, know that such patients consti-

tute a small minority. I know a lady who, for many years, has habitually had in her house four border-line cases. She has had only one attempt at escape. It was on a cycle ride, and the fugitive gave in at once when overtaken. As I have said, the Commissioners should be informed of any such attempt.

The system in Scotland is far more humane. I suppose the Scotch have less power of imagination, and do not magnify small risks into insuperable dangers. They can at least claim that their system is justified by its result. Any insane or border-line patient for whom the course seems desirable "with a view to recovery" and is recommended by a doctor may remain in private care uncertified for six months. It is said to answer well, and prosecutions seem unknown.

Whatever danger may be supposed to be prevented by the present law would be more securely and more extensively prevented by the system of notification I suggest. It would greatly increase the range of influence for public good, and would far better secure the certification of cases that really need it.

As I have said, the Commissioners' Reports show that the work they have to do is in amount astonishing. The subject was brought before me by the fact that they seem unable personally to investigate the cases for prosecution. They depute the superintendent of a neighbouring asylum, or some alienistic physician, to examine and report to them on the case. Almost all their work is of a character that must chiefly be done by the medical Commissioners. Of these there are three, and there are three legal Commissioners, whose work is doubtless great but is not in evidence to the same extent. There are two medical Visitors and one legal, but they are concerned only with Chancery patients, and have nothing to do with the work of the Commissioners.

The number of these is the same to-day as when the system was arranged in 1845. What of the insane under their supervision, for whom they have great responsibility?

The number of insane under their supervision before 1859 is not known, but it was then about 36,700. It is now 110,700. It has increased to three times the number of 1859. We can scarcely doubt that the number in 1845 would not be more than 27,700, one quarter of the present number. The number of Commissioners that was considered proper for 27,000 then

cannot by any conceivable mental process be regarded as sufficient for 110,000 now. Moreover, every patient needs supervision, individually or collectively, of a character which can be given only by the medical members. They alone can estimate the sanitary arrangement of the asylums and the condition of the patients, and examine into the many questions of health and disease continually presenting themselves. To provide medical Commissioners on the same proportion as was considered proper in 1845, when the standard of attention was certainly lower, their number should be increased to twelve.

In Scotland there are 15,800 patients under the supervision of two medical Commissioners and two medical Assistant Commissioners; the latter seem to be needed by the system of "boarding-out" which extensively prevails in Scotland, apparently with great advantage. If we ignore the latter, there is one Commissioner to about every 8000 patients, instead of the one to 37,000 in England and Wales. To provide the same adequacy as exists in Scotland, there should be fourteen medical Commissioners. Is there any Government department so flagrantly undermanned?

I am sure that the time has come when the whole work of the Board of Lunacy needs investigation, and, in the light of the facts I have brought forward, our Lunacy Law needs to be reconsidered. It is twelve years since the Consolidating Act was passed, and those twelve years have furnished sufficient experience to justify investigation. There is not only the harmful and unjust effect which it has been my object to bring before you. Other connected questions press for consideration, such as the urgent need for institutions for the temporary treatment of border-line cases of the lower classes, a need which your Association has already considered, and which the present law seems to preclude. I would urge earnestly that there is more than sufficient reason for the appointment of a Royal Commission to examine the whole question.

The decision will presumably rest with the Lord Chancellor. This department for the supervision of the management and treatment of a vast amount of disease is under ultimate and penultimate legal control. The Board consists of eleven members, of whom three only are medical. The head of this department is the first lawyer in the kingdom, and at the present time, is one who is such not merely by

position but in reality, and who combines with his vast knowledge a sense of what is right and just so keen that I cannot think an adequate appeal to him will be in vain. But the multifarious duties of the Lord Chancellor must ever make his control hardly more than nominal, and especially as regards the medical work. A grave responsibility rests with the Legislature. Apparently the confidence reposed in the Lord Chancellor was such that the Lunacy Act of 1890 was passed through both Houses without even the semblance of discussion. Search the pages of "Hansard" if you doubt this startling fact. It is not fair, indeed, to assign blame to the Members of Parliament. If, having eyes, they did not see that which was outside their range of vision, they are free from fault ; but if, having ears, they now hear not the testimony of those who can see, is not their condemnation written ?

It behoves, then, those who see to testify how widely the need for a change is clearly perceived and keenly felt. I know that it is so in our profession, even in its rank and file, not for themselves, but for those they treat. But, as Sir Michael Foster once said, "we doctors, like the conies, are a feeble folk." It is so in our separate isolation ; but union gives some strength even to us, and the sound of many voices, with no discord, may be heard.

A thorough inquiry cannot be speedy. It must take time. Meanwhile are the harm and hardship to go on and the risks of the infraction of the law for the good of others still to be run ? The Lord Chancellor should be all-powerful, but he is still beneath the law, and cannot connive at its infraction. I would earnestly urge that precious relief could be at once afforded by the passage of a simple enactment that—

"The provisions of the Lunacy Act relating to private patients taken for payment shall apply only to such cases as in the judgment of the Commissioners need to be certified and detained in their own interest or for the safety of others."

Such a provision could surely meet no reasonable opposition, at any rate as a temporary measure. It might induce some voluntary notification, which the law would, I think, permit, and of which the Commissioners could not well complain, since they seem to have wide powers of delegating special tasks. A less easy alternative would be a trial of the Scotch system.

Gentlemen, I have brought this subject before you under a compulsory sense of duty. I would rather have tried to interest you by discussing some subject of purely medical interest, on which I might at least have promoted thought if I could not provide instruction. Indeed, I intended to supplement what I have said, and try to compensate for its mundane character, by asking you to accompany me on a flight of fancy, by considering the part that may be played by the cerebral dendrites in insanity. But the subject I have brought forward seems to me far too important to admit the interposition of any other before the discussion I hope it will receive.

I have taken the opportunity also because I thought my words might at least have an impartial sound. I am with you to-day by your courtesy, although I am not of you ; I am not an alienist, but not, I hope, an alien. It will be obvious, I think, that I can be actuated by no other motive than a desire to promote the good of others. No one can live through many years of life and be sanguine of swift success in any effort. I may fail, and, indeed, I can succeed only by arousing the efforts of others ; but failure cannot be for long. No grave injustice, once perceived, remains for long unremedied, and meanwhile I have the consciousness of having done my best.

---

#### NOTE.

IN the preceding address little has been said of the importance of securing proper conditions for the welfare of patients received in private residential care, because this was outside my special subject. I feel most strongly the extreme importance of such security, but I am sure that it can never be obtained by the compulsory certification of every case on, or just over, the verge of mental soundness. To endeavour thus to ensure public safety, under central governmental direction, is to attempt the impossible, to fail inevitably, and in the course of failure to produce varied harm, direct and incidental.

Moreover such provision would leave unsecured all those who cannot be regarded as unsound in mind. The only plan

that seems likely to deal effectively with all cases taken for payment is that suggested by Sir W. Church in a letter to *The Times*. In this he recognises the need for an alteration in the present system, and also the difficulty occasioned by a great increase of the work of the Lunacy Commissioners. He says :

"This difficulty would be greatly lessened if the notification of persons not needing, in the opinion of their medical attendants, removal to an asylum or definite detention, but separation from their home surroundings and the care of skilled and responsible persons, was made in the first instance to the local authority, as is done in the case of infectious disease. The medical officer of health for the county or borough, or some other official appointed by the local authority, should have the particulars of each case sent him, and should have power to visit them and ascertain that they were in proper hands and suitably cared for. He should keep a register of all such cases and their place of residence, and forward it from time to time to the Commissioners in Lunacy, to whom there should be power to appeal both by the patients and their friends."

I know that some medical officers of health see no difficulty in the plan ; the local authorities could, moreover, provide for special help if necessary. Such devolution to local control of work that cannot be efficiently performed by a central authority is in harmony with modern tendencies. If such a change seems at first sight formidable, it may become less so when once attempted.

It has been suggested that the need I have urged is already provided for by the provision for the reception of border-line patients as voluntary inmates of public asylums. There are a few patients whom such an arrangement suits. That most sufferers on the verge of mental derangement should place themselves in lunatic asylums is a suggestion which must seem, to those who know the cases, to have been made in pure sarcasm.

It is earnestly to be hoped that any measure for immediate relief which may be proposed will not be rendered ineffective by provisions and limitations brought forward in the name of public safety, but really needless. One such limitation existed in the Bill which the Lord Chancellor introduced, in 1900, to legalise in England a system analogous to that in Scotland, for the reception under private care of a case of incipient insanity, for six months "with a view to recovery," on a simple medical certificate. The limitation referred to is contained in the words of the Bill, "No person shall under this section receive more than one patient at the same time." It is not clear

whether it is intended that the words "under this section" are intended to qualify "patient," or that the limitation to one patient is to be absolute. Some of those whose help with such cases is most precious have arrangements for more than one patient, and their help would be impossible under such an absolute restriction. In either case it is difficult to perceive what benefit can result. No such restriction exists in Scotland. Nor is any sanction there necessary analogous to that of a Justice of the Peace in England. Such a sanction could be only a useless formality; it would be so even if it involved examination of the patient, when it would be also harmful. It would lessen the apparent difference from certification and gravely diminish the utility of the system.

Two objects, and those only, should be in view in any measure that is proposed for remedial care. One is to secure that no patient should be thus treated for whom certification is necessary in his or her own interest. The other is to secure that the conditions under which the patient is placed are such as are likely to promote recovery.

In regard to the latter, it is of interest to note the questions in the Scotch Visitors' Book for "Private Patients in Private Dwellings," although it does not apparently apply to the cases received for six months "with a view to recovery." One question is, "Are the circumstances in which the patient is placed suitable for the promotion of comfort and the carrying out of medical treatment?" Another is, "Does the provision made for the patient fairly correspond to the rate of board paid?" It would be well if the supervision indicated by these questions could be exercised in the case of patients of every kind received for payment.

Letters, which this address has brought me from several of the highest Scotch authorities on lunacy, breathe a profound commiseration for the inferiority of the English system. But there are reasons for the difference. The Scottish system has come into being as part of the social arrangements in which mental unsoundness is regarded as a disease, and the sufferers are in the hands of an acting Board composed of doctors, with legal members only to deal with the legal points that so often arise. In England the active Board consists of an equal number of legal and medical members, who perform the same duties for the most part, so far as an outsider can discern

This arrangement has its roots far back in the past. For six centuries the King has been the guardian of all those of unsound mind, first perhaps because their incomes added to his revenue. For the last four centuries, at least, the Lord Chancellor has been his special substitute. The share of control given to doctors is a modern innovation, dating back less than a hundred years. The Lord Chancellor and the legal Commissioners represent the dead hand of a distant past, but are not therefore to be assumed hastily to be valueless. If the Lord Chancellor had less to do a better head could not perhaps be found, and even a figure-head has more real influence than may be at first discerned. But the need for a much larger proportion of medical effective work can scarcely be denied.

I am sure, also, of another fact. It would contribute greatly to the efficiency of the Lunacy Commissioners if they had previous training in subordinate work of the same kind. In this, again, the Scottish system presents an example worth consideration. The Assistant Commissioners are acquiring the experience which must make them far more efficient when they attain the higher rank. In England an able outsider has to begin by learning his work ; the process is not a pleasant one, and the ultimate result varies more than it should do. So I have learned from many quarters, and so, I believe, would be clearly discerned by any Commission which conducted a thorough investigation.

All that has come to my knowledge since this address was given, and in consequence of it, serves to emphasise the double need urged in it—the need for some relief, as speedy as may be, and the need for augmentation of the controlling authority, perhaps with rearrangement, without undue delay. The vast improvement achieved under the present system should not prevent discernment of its defects. Every organisation, to be adequate, must grow and develop in the same degree as that with which it deals.

W. R. G.

LONDON : *January, 1903.*

